

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
AMARILLO DIVISION

JUAN GARZA,

Plaintiff,

v.

MICHAEL J. ASTRUE,
Commissioner,
Social Security Administration,

Defendant.

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2:10-CV-013

REPORT AND RECOMMENDATION
TO GRANT PLAINTIFF'S MOTION TO DISMISS
and TO DISMISS COMPLAINT

Came for consideration the motion to dismiss filed by plaintiff JUAN GARZA on May 2, 2011. By his motion, plaintiff advises he no longer wishes to pursue his claim and moves the Court to dismiss his pending cause of action seeking review of a final decision of defendant MICHAEL J. ASTRUE, Commissioner of Social Security (Commissioner) denying plaintiff disability benefits. While plaintiff advises he has consulted with defendant and defendant is not opposed to the motion, the defendant has not stipulated to the dismissal as provided by Federal Rule of Civil Procedure 41(a)(1)(A)(ii).

RECOMMENDATION

It is the recommendation of the undersigned United States Magistrate Judge to the United States District Judge that plaintiff's motion to dismiss be GRANTED and the complaint filed by

plaintiff be DISMISSED provided defendant does not object to the dismissal within the time limits set forth hereafter.

INSTRUCTIONS FOR SERVICE

The United States District Clerk is directed to send a copy of this Report and Recommendation to each party by the most efficient means available.

IT IS SO RECOMMENDED.

ENTERED this 6th day of May, 2011.


CLINTON E. AVERITTE
UNITED STATES MAGISTRATE JUDGE

*** NOTICE OF RIGHT TO OBJECT ***

Any party may object to these proposed findings, conclusions and recommendation. In the event parties wish to object, they are hereby NOTIFIED that the deadline for filing objections is fourteen (14) days from the date of filing as indicated by the “entered” date directly above the signature line. Service is complete upon mailing, Fed. R. Civ. P. 5(b)(2)(C), or transmission by electronic means, Fed. R. Civ. P. 5(b)(2)(E). **Any objections must be filed on or before the fourteenth (14th) day after this recommendation is filed** as indicated by the “entered” date. *See* 28 U.S.C. § 636(b); Fed. R. Civ. P. 72(b)(2); *see also* Fed. R. Civ. P. 6(d).

Any such objections shall be made in a written pleading entitled “Objections to the Report and Recommendation.” Objecting parties shall file the written objections with the United States District Clerk and serve a copy of such objections on all other parties. A party’s failure to timely file written objections to the proposed findings, conclusions, and recommendation contained in this report shall bar an aggrieved party, except upon grounds of plain error, from attacking on appeal the unobjected-to proposed factual findings, legal conclusions, and recommendation set forth by the Magistrate Judge in this report and accepted by the district court. *See Douglass v. United Services Auto. Ass’n*, 79 F.3d 1415, 1428-29 (5th Cir. 1996); *Rodriguez v. Bowen*, 857 F.2d 275, 276-77 (5th Cir. 1988).